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2008 JAN 17 P 1:35

FILED 2008 JAN 17 PM 1:35
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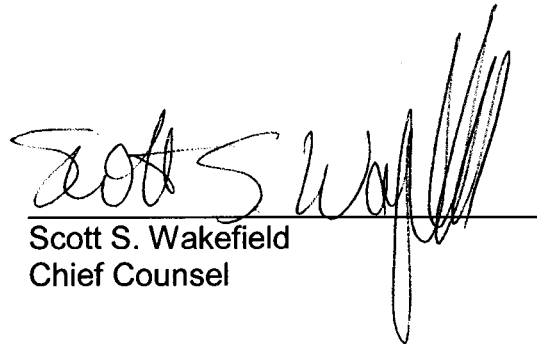
IN THE MATTER OF SEMPRA ENERGY
SOLUTIONS APPLICATION FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY FOR COMPETITIVE RETAIL
ELECTRIC SERVICES.

Docket No. E-03964A-06-0168

NOTICE OF FILING

The Residential Utility Consumer Office ("RUCO") hereby provides notice of filing the
Rebuttal Testimony of Stephen Ahearn in the above-referenced matter.

RESPECTFULLY SUBMITTED this 17th day of January 2008.


Scott S. Wakefield
Chief Counsel

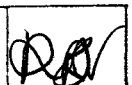
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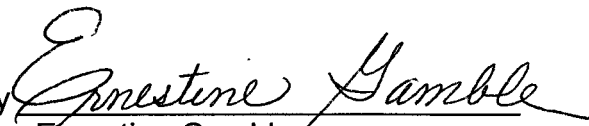
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SEMPRA ENERGY SOLUTIONS

DOCKET NO. E-03964A-06-0168

**REBUTTAL TESTIMONY
OF
STEPHEN AHEARN, DIRECTOR**

**ON BEHALF OF
THE
RESIDENTIAL UTILITY CONSUMER OFFICE**

JANUARY 17, 2008

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INTRODUCTION

Q. Please state your name and business address for the record.

A. My name is Stephen Ahearn. My business address is 1110 West Washington, Suite 220, Phoenix, Arizona 85007.

Q. Have you previously filed testimony in this docket?

A. Yes, I filed direct testimony on July 3, 2007.

Q. What is the purpose of your rebuttal testimony?

A. I am responding to the testimony filed by various parties concurrently with my direct testimony or later. Specifically, I will address matters raised by Kevin Higgins on behalf of Air Liquide Industrial U.S. LP ("Air Liquide"), Peter Fox-Penner and Frank Graves on behalf of New West Energy Corporation ("New West Energy"), and Bing Young on behalf of the Utilities Division ("Staff"). In addition, Greg Bass filed supplemental direct testimony on behalf of the Company, which I will also address briefly.

Q. Please summarize your rebuttal testimony.

A. The direct testimonies of New West Energy Corporation witnesses Fox-Penner and Graves, and ACC Staff witness Young explicitly and implicitly buttress the position I described in my Direct Testimony, especially with regard to jeopardizing the public interest by the granting of an application for a CC&N to serve retail loads in Arizona at this time. Specifically, the

1 testimonies of Fox-Penner and Graves elaborate further on the real risks
2 and indeterminate benefits of retail competitive experiments elsewhere
3 and call into serious question whether the requisite conditions and market
4 and regulatory structures currently exist in Arizona to go forward with retail
5 competition. The testimony of Staff witness Young equivocates with
6 respect to the merit of retail competition itself, leaving unanswered the
7 high-level public policy question that, as a threshold matter, should be
8 answered prior to abetting the implementation of retail competition. In
9 effect, these parties, in whole or in part, share RUCO's concern about
10 whether granting the application at this time is appropriate.

11
12 The testimonies by Company witness Bass and intervenor Air Liquide's
13 witness Kevin Higgins go primarily to a discussion of the suitability and
14 fitness of the applicant and presume that retail competition is in fact a
15 benefit. As such, these testimonies are largely unresponsive to what
16 RUCO believes should be the central issue raised by this application—that
17 of whether retail competition itself is in the public interest.

18
19
20 ..

21
22 ..

**OTHER WITNESSES ALSO EXPRESSED CONCERNS ABOUT
COMPETITION**

Q. Do Staff and the other intervenor witnesses appear to be supportive of retail competition?

A. None of them offered an analysis of the merits of retail competition that concludes that retail choice is in the public interest. Though Staff witness Bing Young concluded that Sempra was a fit entity to receive a certificate of convenience and necessity, his recommendation for approval of the Company's application was "premised on the assumption that the Commission finds that retail electric competition is in the public interest." He further discusses several public policy factors relating to the question of retail electric competition generally, and then identifies several concerns including that competition may not result in just and reasonable rates and that the existence of retail competition can complicate resource planning designed to yield the most desirable mix of resources to meet customers' total load. He did not specifically conclude that retail competition is in the public interest; rather, he suggests that, with a few conditions (such as a time limit of 5 years), granting Sempra a CC&N "probably" does not endanger the public interest.

Likewise, Mr. Higgins does not evaluate whether retail competition generally is in the public interest, but merely claims that granting Sempra's application provides a public benefit because it provides an opportunity for

1 customers to take direct access service consistent with the Electric
2 Competition Rules. He offers no analysis of whether retail competition is
3 appropriate at this time or whether conditions currently exist that would
4 guarantee its success.

5
6 Mr. Graves and Mr. Fox-Penner discuss retail competition both more
7 generally and with great detail. After identifying a number of important
8 shortcomings of the current regulatory structure in Arizona, they suggest
9 that it is, at best, premature to proceed with retail competition until
10 numerous important and complex structural prerequisites are in place.

11
12 Q. Do the other witnesses offer unequivocal evidence of a public interest
13 benefit of approving the application in this matter?

14 A. No. On the contrary, the New West Energy witnesses specifically cast
15 doubt on whether the public interest would be served by furthering retail
16 competition at this time, absent significant additional work by the
17 Commission on getting the preconditions for possible success put in place
18 in advance of the granting of the application, and perhaps not even then.
19 New West's discussions evidence a greater concern for the risks of
20 permitting the CC&N than for the loss of any potential benefits that would
21 be occasioned by its denial.

1 Staff's witness admits that the question of whether issuing a CC&N in this
2 matter is in the public interest is "...a difficult question" (Young direct
3 testimony, p. 22), although he identifies the prospect that profitable, high
4 load-factor customers "cherry-picked" from incumbents by competitive
5 providers "...would likely have an impact on the incumbent" (p. 23), and
6 that such a scenario could potentially create "higher rates for residential
7 and small commercial customers." He further states that "markets must
8 first be functional if they are to protect the public interest"—a market status
9 answered in the negative by the Commission itself in the Track A
10 proceeding—and then raises the question of whether resource planning
11 would be complicated by granting the application. In addition, he states
12 that a literature review conducted by Staff revealed that the effects of
13 competition are inconclusive. Finally, the Staff witness was unable to
14 answer definitively whether granting the CC&N endangered the public
15 interest.

16
17 Taken together, the testimony of these witnesses support RUCO's
18 concern that, at best, it is premature to grant the CC&N in this application.

19
20 The testimonies of the Company and Air Liquide witnesses seem to
21 represent that the ability to choose is, in itself, the public interest benefit
22 but offer no concrete analysis or definitive proof to support such a claim.
23

1 Q. Do the other witnesses offer unequivocal evidence of a negative impact on
2 ratepayers if competition is pursued in Arizona?

3 A. Not overtly. The nature of the testimonies of both New West Energy
4 witnesses and to a lesser degree, that of the Staff witness is cautionary
5 with respect to going forward with the retail competition experiment.
6 Various substituting the terms "deregulation" and "restructuring" as
7 illustrative proxies for the retail choice question at issue in this case,
8 witness Fox-Penner points out that while wholesale competition may be
9 driving down the cost of generating power, there is no evidence to indicate
10 that it has delivered lower retail prices for consumers (Fox-Penner, pp. 2-
11 3). He states with certainty that restructuring has only delivered price
12 uncertainty and that it is "undisputed" that it has led to price volatility and
13 financial instability for utilities (p. 11). Finally, he states plainly that
14 restructuring "strongly set back" energy efficiency efforts.

15
16 New West witness Graves offers even greater detail on the lack of
17 necessary preconditions and structures for competition going forward, and
18 describes multiple serious economic flaws of using utility standard offer
19 tariffs as the provider of last resort ("POLR") rate that should be offered to
20 prodigal customers seeking to return to the utility fold, notwithstanding a
21 regime of switching rights charges. While he devotes significant comment
22 about unfamiliar-to-Arizona POLR procurement processes conducted
23 elsewhere, the testimony is germane and instructive; consideration of

1 such procedures is a logical future outcome that could be anticipated from
2 pursuing the competitive option in this and the cases that will follow this in
3 the event of the application's approval. Among other drawbacks of retail
4 choice, witness Graves suggests that integrated resource planning may
5 become "infeasible." (p. 26). Finally, Graves offers that none of "the
6 several prerequisite steps involved in retail market design" are in place in
7 Arizona. While not explicitly a condemnation of retail choice, the totality of
8 the testimonies of the New West witnesses constitute more a message of
9 *caveat emptor* than an endorsement of the concept. Witness Graves'
10 concluding remark is telling: a failure to get necessary structures in place
11 in advance of implementing retail choice "is likely to result in Arizona
12 repeating the mistakes of others." (p. 30)

13
14 Likewise, the Staff witness does not explicitly condemn the retail
15 experiment, instead offering several examples of unpleasant potential
16 outcomes from approving this application. Staff alludes to the fact that the
17 departure of certain highly desirable customers from a utility system could
18 expose remaining captive customers of that system to a greater risk of
19 increasing fixed cost coverage exposure. Further, witness Young admits
20 that there is currently no "comprehensive framework in place to govern
21 retail competition," (Young, p. 18) echoing the structural concerns of the
22 New West Energy witnesses. As mentioned above, the Staff witness was
23 not able to answer the question of whether issuing a CC&N in this case is

1 in the public interest, but he does state unequivocally that "the most
2 important consideration is the Commission's responsibility to provide just
3 and reasonable rates for all classes of customers." (Young, p. 22). That
4 the witness's testimony offers both an implied warning of retail choice and
5 an acknowledgment of the overriding public interest of just and reasonable
6 rates while at the same time recommending approval of the application,
7 albeit with qualifications, is puzzling to RUCO. But the totality of the Staff
8 witness's testimony and its conclusions should give the Commission
9 pause and reason for concern rather than assurance about going forward.

10
11 Again, insomuch as the witnesses for the applicant and intervenor Air
12 Liquide focus more narrowly on the Company's capabilities and fitness
13 and the application's narrow requirements, they have in their direct
14 testimonies not offered the exposition of public interest considerations that
15 characterize most of the testimonies by the other witnesses.

16
17 **RESPONSE TO AECC**

18 Q. Mr. Higgins compares retail choice to Demand Side Management
19 ("DSM"), claiming that both relieve the incumbent utility of the obligation to
20 procure expensive on-peak resources and thus result in cost savings. Do
21 you have any response to that claim?

22 A. Yes. While I do agree that DSM can substitute for the acquisition of
23 generating resources and result in cost savings, I disagree that retail

1 competition will similarly result in less reliance on expensive peaking
2 plants overall. A customer taking generation from a competitive provider
3 might mean that the incumbent utility does not have to acquire as much
4 expensive on-peak power to meet the needs of its own customers' load,
5 and thus might experience lower costs. However, the competitor's
6 customer will still require the power. When looking at the entire electrical
7 system, the dispatch of available plants would not likely change
8 significantly because a retail customer obtains service from a competitive
9 provider. Thus, the opportunity for retail competition is likely neither to
10 change the overall costs to generate electricity nor deliver the
11 environmental benefits of using less electricity, nor engender the cost
12 avoidance and system peak-load shaving benefits to the degree that a
13 successful implementation of demand-side measures will.

14
15 **COMPETITIVE FRAMEWORK HINDERS COMMISSION'S ABILITY TO**
16 **PROMOTE SOCIETAL GOALS**

17
18 Q. In RUCO's opinion, are there any other negative impacts that the
19 existence of retail competition presents?

20 A. Yes. In an environment of retail electric competition, the Commission will
21 be constrained in its attempt to promote certain societal goals through
22 specific rate designs and formal planning processes more generally. The
23 Commission has historically considered a number of goals, such as
24 fairness, gradualism, and conservation of limited resources, when

1 designing rates. In an environment of retail competition, competitors
2 would have flexibility to design rate, and they may not utilize rates that
3 promote the same goals. For example, the Commission often requires
4 tiered rates to incent customers to conserve resources. However, if
5 competitive providers have flexibility to structure their rates, they are
6 unlikely to design rates that promote the same societal goals as are
7 determined to be important by popularly-elected regulators responsive to
8 the needs of Arizona citizens. High use customers, particularly, would
9 then have an incentive to take service from a provider that, for example,
10 does not charge higher rates for additional consumption, undermining the
11 very societal goal the Commission is attempting to promote.

12
13 With respect to planning, my direct testimony addressed concerns that
14 retail competition would complicate an integrated resource planning
15 process. My concerns on this subject were echoed and reinforced by the
16 testimony of the other witnesses.

17
18 **CONCLUSION**

19
20 Q. Do you have any concluding comments?

21 A. Yes. The Commission must consider the public interest in this
22 proceeding, and RUCO is apparently not alone in questioning whether the
23 public is benefited by the existence of retail electric competition. As

1 discussed in my direct testimony, residential customers particularly are put
2 at risk in an environment of retail competition, and Messrs. Graves and
3 Fox-Penner have pointed out a number of difficulties that would impact
4 customers system-wide. The possibility that certain large customers *might*
5 attain particular benefits in a competitive environment is not reason
6 enough to subject all customers, and the public interest, to the significant
7 risks that competition presents. The Commission should therefore decline
8 to resume an experiment with retail competition.

9
10 Q. Does this conclude your testimony?

11 A. Yes.